

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-27028

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2009

Bay County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on March 4, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is a single, 31-year-old male with a Special Education history through 10th grade, at which point, he left school.

(2) Claimant lives with his mother; he is fully independent in all basic living activities and self cares.

(3) Claimant currently possesses a valid driver's license but he admits to having one remote alcohol-related conviction (DUI) at age 21.

(4) A June 2007 psychiatric update from claimant's outpatient mental health provider, [REDACTED] (this case was reopened in February 2007), reveals claimant was still using alcohol on the weekends at that time but his moods were well-controlled and his Global Assessment Function (GAF) was 60 (Department Exhibit #1, pg 127).

(5) Claimant's historical mental health diagnoses are: (1) Learning Disorder (NOS); (2) Dysthymic Disorder; and (3) Panic Disorder (without agoraphobia)(Department Exhibit #1, pg 127).

(6) Claimant's 2008 annual mental health update report (3/08) adds Personality Disorder (NOS) with borderline dependent traits to his listed diagnoses and recommends referral to [REDACTED] for training and/or job placement consistent with claimant's skills, interests and abilities (Department Exhibit #1, pgs 257-261).

(7) Claimant has no relevant work history, having gotten fired from his only job as a stock boy at age 18.

(8) On April 4, 2008, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(9) When the department denied that application, claimant filed a hearing request; his hearing was held on March 4, 2009.

(10) Claimant alleges he is completely unable to engage in any type of substantial gainful work activity due to his mental problems, as well as always being "tired" and "weak" with chronic heart palpitations and an intermittent angry disposition (i.e., "anger outbursts").

(11) Claimant's 2007 IQ tests results reveal Borderline Intellectual Functioning (i.e., a) Verbal IQ =73; b) Performance IQ=74; and c) Full Scale IQ=71 (See Unfavorable Social Security Administration Decision issued 10/1/07, pg 9).

(12) On September 11, 2007, claimant alleged impairments at his Social Security Administration (SSA) disability hearing identical to those alleged at his MA/SDA hearing.

(13) Based on Social Security Vocational Expert testimony at that hearing, the federal Administrative Law Judge concluded:

...the undersigned concludes that, considering claimant's age, education, work experience, and residual functional capacity, the claimant has been capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of "not disabled" is therefore appropriate under the framework of the above cited rule (See Unfavorable Social Security Administration Decision issued 10/1/07, pg 11).

(14) An April 17, 2008 letter from claimant's attorney indicates this denial was appealed and is pending at the Appeals Council level (Department Exhibit #1, pg 190).

(15) Claimant stands approximately 6'1" tall and is morbidly obese at approximately 335 pounds (BMI=44.2), according to mental health records prepared the month before claimant filed his April 2008 disputed MA/SDA application (Department Exhibit #1, pg 123).

(16) Claimant has a history of high blood pressure and cardiac atrial fibrillation, both assessed as being well-controlled on current prescription medications (Department Exhibit #1, pgs 51, 54, 108 and 189).

(17) In fact, claimant's cardiac consultation records note his EKG testing was normal and state in conclusion:

[Claimant] has had a long history of paroxysmal atrial fibrillation which is reasonably well controlled on the [REDACTED]. [Claimant] perhaps should be on potassium 8 mEq daily given that he is on [REDACTED]e. Of course, weight loss, caffeine cessation and

avoidance of any over-the-counter cold remedies is recommended. We would not expect him to have complete 100% control of his arrhythmia and as long as his episodes are fairly infrequent, then I would still call this a therapeutic success and I would not recommend a change or alteration in his [REDACTED] therapy (Department Exhibit #1, pgs 77and 107).

(18) Likewise, claimant's outpatient mental health provider continues to prescribe an antidepressant and sleep aid for symptom management.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques.

Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. This Administrative Law Judge finds claimant's current prescription medications are fully capable of adequate symptom management, given the objective documentary evidence presented.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

Claimant does not qualify for the MA/SDA disability coverage he seeks because he has not established the existence of a medically severe condition, or combination of conditions, which would prevent him from engaging in any number of simple, unskilled jobs currently existing in the national economy despite his borderline intellectual functioning. As such, claimant's disputed application must remain denied in concurrence with the department's State Hearing Review Team (SHRT) decision dated March 21, 2009, and with the Social Security Administration's disability disallowance dated October 1, 2007.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's April 4, 2008 MA/SDA application.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 11, 2010

Date Mailed: February 11, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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cc:

